

Persons who purport to “lease” the use of property, but in fact sell such tangible personal property to the “lessees,” are considered to be making conditional sales subject to Retailers' Occupation Tax. Section 130.2010(a). See 86 Ill. Adm. Code 270.115(b). (This is a GIL.)

September 22, 2004

Dear Xxxxx:

This letter is in response to your letter dated May 27, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are an equipment leasing company incorporated in and doing business in Illinois. We lease equipment in various locations in Illinois, all having different tax rates. When we bill the monthly payment to the customer, we bill that customer based on the tax rate where the equipment is located. In a recent tax filing for sales taxes collected, I reported the tax at the 6.25% rate for the area where the customer equipment is located. I was subsequently billed at a rate of 7% because our office is located in CITY which has a sales tax rate of 7%.

For federal income tax purposes, we are not generally the owner for taxation since our leases primarily pass title to the customer after they have paid the required lease payments plus a \$1 end of lease payment.

In all other states, we bill and collect as I had done for the report, could you clarify for me that we are billing and remitting correctly so that I will be paying the correct amount of sale tax.

DEPARTMENT’S RESPONSE

For general information purposes please refer to 86 Ill. Adm. Code 130.2010, the Department’s regulation that covers the taxation of leases. Under Illinois law, “true leases” and “leases” that are

actually conditional sales contracts are treated differently for Retailers' Occupation Tax and Use Tax Purposes.

A conditional sale is usually characterized by a nominal or one dollar purchase at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

It appears from the information contained in your request that you are making conditional sales of equipment. The Illinois Retailers Occupation Tax and Service Occupation Tax are imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users. The imposition of the various local sales taxes in Illinois takes effect when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115(b). The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out of your local jurisdiction or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred.

Although the regulation cited above (86 Ill. Adm. Code 270.115) deals with the municipal home rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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